

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 04-10029-GAO

UNITED STATES OF AMERICA

v.

DANIEL E. CARPENTER,
Defendant.

ORDER

September 1, 2011

O'TOOLE, D.J.

The defendant's motion for a mistrial (dkt. no. 283) regarding the testimony of Gerald Levine is DENIED.

While it is clear to me that Levine testified falsely with respect to whether he had any interaction with David Patterson, the government did not violate its obligations under Napue v. Illinois, 360 U.S. 264 (1959). The government did not withhold, and in fact disclosed to the defendant, information which impeached Levine's testimony about Patterson. The defendant vigorously cross-examined Levine on the point. Moreover, the government later called Patterson and elicited from him testimony that contradicted Levine's false testimony. The remedy of a mistrial is not warranted.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge